

This letter discusses several sales tax issues for lessors of durable medical equipment. See 35 ILCS 130.310. (This is a GIL.)

May 3, 2007

Dear Xxxxx:

This letter is in response to your letter dated November 2, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is registered to do business in your state and would like to request an updated ruling from you regarding the sales tax requirements of our business in your state.

ABC is in the business of '**renting**' durable medical equipment (see enclosed equipment list) to aid in the care of obese patients with occasional '**sales**' of the same equipment. We **rent/sell** to various locations throughout the state. Our **rentals/sales** are to hospitals, nursing homes and to individuals. Some of these entities will be exempted from sales tax by nature, however, some will not. In the event they are not, we must know what is a taxable product and what is not.

ABC is expanding into Homecare Medical Equipment as well (see enclosed equipment list). In time, we will dealing with billing Medicare, Medicaid, insurance companies and the patient (in most all instances the equipment is by prescription). In each of these cases, we need to know if sales tax applies.

We would like a written opinion from your department, specifically on the items we **rent/sell**, so that we do not misinterpret the sales tax rules of your state. In addition, please send us a copy of your Sales Tax Rules and Regulations.

Please send us a written determination regarding the sales tax requirements on the **rental/sales** of our equipment and the **delivery fees** (via company vehicles) or **shipping fees** (via common carrier) thereon. The items we ***rent/sell*** are as follows:

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| ▪ Full Room Environment | ▪ Hospital Bed |
| ▪ Patient Lift System | ▪ Bed Trapeze |
| ▪ Power Wheelchair | ▪ Wheelchair/Reclining
Wheelchair |
| ▪ Transport Chair (converts chair
to stretcher) | ▪ Shuttle Chair (converts chair
to table) |
| ▪ Multi-functional Rehab Chair (3 position – flat, seated or standing) | |
| ▪ Continuous Air Flow Mattress | ▪ Non-Powered Mattress
Overlay |
| ▪ Scooter | ▪ Rollator |
| ▪ Shower/Commode Chair (on wheels as a wheelchair) | |
| ▪ Bedside Commode | ▪ Shower Chair (no wheels) |
| ▪ Walker | ▪ Lift Recliner |
| ▪ Canes/Crutches | ▪ Service Agreements |

Please address the taxability of labor, parts and mileage for servicing our sale equipment without a service agreement and parts and mileage with a service agreement.

In addition, we have occasional '***sales***' of disposable items (one patient use) such as commode pails, lift slings, etc.

Another area of concern is where to tax the ***rental/sale***. Many states are converting to a destination-based sales tax. Most of our ***rentals/sales*** are delivered to different locations throughout the state. Please address the issue of the taxing jurisdiction.

If possible, please fax the determination to me.

If you need to contact me, my number is #.

Thank you for your prompt response.

DEPARTMENT'S RESPONSE

You have requested information regarding several sales tax subjects. We hope the following information is helpful.

Illinois Sales Tax:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply.

Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If

no tangible personal property is being transferred to the customers incident to the services provided then no Illinois Service Occupation Tax nor Service Use Tax would apply.

Leases:

With the exception of leases of automobiles for periods of one year or less, Illinois does not tax rental receipts received under true leases. A true lease either has no purchase option by the lessee at the end of the lease term, or a purchase option for the fair market value of the leased item at the end of the lease term. On the other hand, a lease which transfers title to the property to the lessee at the end of the lease, or contains a provision which allows for the purchase of the property at the end of the lease for a bargain purchase price, is not considered a true lease, but rather is a conditional sale. Tax is due on receipts received under a conditional sale when received by the "lessor."

Lessors of items of tangible personal property are considered to be users of that property, and, as such, owe Use Tax when they purchase tangible personal property to be used for rental purposes. The Use Tax liability is the lessor's, not the lessee's. While it would be permissible for the lessee to adjust the price he charges his customers to reimburse himself for the Use Tax liability, the lessor may not charge this amount to his customers designated as "tax". The customers do not, as lessees, incur the tax liability. The liability falls on the lessor.

Occasional Sales:

In Illinois, the "occasional sale" exemption is available when a person purchases an item and then, after using the item, disposes of it by selling it. However, this means that for a sale to qualify as occasional, an entity must not be in the business of selling the same type of tangible personal property. For example, if a seller of computers decides to sell computers that it has used internally, such sales would not qualify as occasional sales because the entity is in the business of selling computers and servers. This is true even if the equipment does not have the same memory or storage capacity or does not perform exactly identical functions as the items normally sold. See the Department's regulation at 86 Ill. Adm. Code 130.110 regarding Occasional Sales.

Medicare/Medicaid:

Sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented through provision of an active exemption identification number. See 86 Ill. Adm. Code 130.2080(a). While no tax may be due on payments made directly to vendors by Medicare or Medicaid, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare and Medicaid. This means when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable.

Medical Appliances:

Medicines and medical appliances are not taxed at the normal State rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310. Items subject to this lower State tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

Generally, medical tools, devices and equipment used for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced State rate of tax for medical appliances as such

items, while being used for treatment of patients, are not directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c).

Wheelchairs and walkers qualify for the low rate of tax. Corrective medical appliances such as hearing aids, glasses, and contact lenses are also eligible for the lower sales tax rate. See Section 130.310(c)(2). However, home lift systems and elevators, bed trapezes, and shower/commode chairs do not generally qualify for the low rate. In order to qualify for the low rate of tax as a medical appliance, the item must directly substitute for a malfunctioning part of the body. These items do not meet this requirement.

Stairway wheelchair lifts, stairway chairlifts, and vertical chairlifts are devices which, while used to assist a person with physical disabilities, do not directly substitute for a malfunctioning part of the body. Such items do not fall within the definition of medical appliance and are, therefore, taxed at the State sales tax rate of 6.25% plus any applicable local taxes. Residential elevators are; likewise, not considered medical appliances as such items do not directly substitute for a malfunctioning part of the body.

With regards to the electrical scooters and power wheelchairs, the Department's rules include wheelchairs as medical appliances eligible for the lower State sales tax rate, which has been interpreted to also include electrical wheelchairs. See, Section 130.310(c)(2). Generally, the lower sales tax rate is not applicable to power operated vehicles. A determination of whether or not an electric scooter qualifies for the lower State rate would depend on specific factual information as to how such item is used and by whom. Such determination cannot be made within the context of a General Information Letter.

You may wish to review the Department's "Sunshine Letter" rulings regarding other specific items. These general information letters may be found on the Department's website under the heading of "Laws/Regs/Rulings."

Maintenance Agreements:

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3).

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information, see 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Applicable Jurisdiction:

For general information please see 86 Ill. Adm. Code 220.115 of the Home Rule County Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales-tax-related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. If a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 220.115. Conversely, if a purchase order is accepted in a jurisdiction that does not impose a local tax, including anywhere outside Illinois, no local tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 220.115 deals with the county home-rule taxes, the principles outlined in this administrative rule apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in the inventory of the retailer in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 220.115(c)(2)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

No tax is incurred on sales in which the seller is obligated, under the terms of his or her agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made. See 86 Ill. Adm. Code 130.605(b)

Delivery Charges:

The Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act may be found at 86 Ill. Adm. Code 130.415. As you can see from the regulation, transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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